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Attorneys for Complainant

**BEFORE THE  
CALIFORNIA BOARD OF ACCOUNTANCY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

JOE REFUGIO DIAZ  
555 N. E Street  
San Bernardino, CA 92401

Certified Public Accountancy  
Certificate No. 59831

Respondent.

Case No. AC-2003-25

**DEFAULT DECISION  
AND ORDER**

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about April 23, 2003, Complainant Carol Sigmann, in her official capacity as the Executive Officer of the California Board of Accountancy, Department of Consumer Affairs, filed Accusation No. AC-2003-25 against Joe Refugio Diaz (Respondent) before the California Board of Accountancy.
2. On or about September 27, 1991, the California Board of Accountancy (Board) issued Certified Public Accountancy Certificate No. 59831 to Respondent. The Certified Public Accountancy Certificate expired on June 30, 1999, and has not been renewed.
3. On or about May 7, 2003, Sylvia Reyes, an employee of the Department of Justice, served by Certified and First Class Mail a copy of the Accusation No. AC-2003-25, Statement to Respondent, Notice of Defense, Request for Discovery, and Government Code sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record with the Board, which

1 was and is 555 N. E Street, San Bernardino, CA 92401. A copy of the Accusation is attached as  
2 Exhibit A and incorporated herein by reference.

3 4. Service of the Accusation was effective as a matter of law under the  
4 provisions of Government Code section 11505, subdivision (c).

5 5. On or about May 12, 2003, the aforementioned documents were returned  
6 by the U.S. Postal Service marked "Undeliverable as Addressed; Unable to Forward." A copy of  
7 the envelope containing the postal returned documents is attached as Exhibit B and incorporated  
8 herein by reference.

9 6. Business and Professions Code section 118, subdivision (b), states:

10 "The suspension, expiration, or forfeiture by operation of law of a license issued  
11 by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or  
12 by order of a court of law, or its surrender without the written consent of the board, shall not,  
13 during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board  
14 of its authority to institute or continue a disciplinary proceeding against the licensee upon any  
15 ground provided by law or to enter an order suspending or revoking the license or otherwise  
16 taking disciplinary action against the license on any such ground."

17 7. Government Code section 11506 states, in pertinent part:

18 "(a) Within 15 days after service upon him of the accusation, the Respondent may  
19 file with the agency a notice of defense in which he may:

20 . . . .

21 "(c) The respondent shall be entitled to a hearing on the merits if the respondent  
22 files a notice of defense, and the notice shall be deemed a specific denial of all parts of the  
23 accusation not expressly admitted. Failure to file a notice of defense shall constitute a waiver of  
24 respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing."

25 8. Respondent failed to file a Notice of Defense within 15 days after service  
26 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.  
27 AC-2003-25.

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Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

It is so ORDERED July 30, 2003

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Exhibit A

Accusation No. AC-2003-25

1 BILL LOCKYER, Attorney General  
of the State of California  
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8 **BEFORE THE**  
**CALIFORNIA BOARD OF ACCOUNTANCY**  
**DEPARTMENT OF CONSUMER AFFAIRS**  
9 **STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

Case No. AC-2003-25

11 JOE REFUGIO DIAZ  
12 555 N. E Street  
San Bernardino, CA 92401

**A C C U S A T I O N**

13 Certified Public Accountant  
14 Certificate No. 59831

15 Respondent.

16  
17 Complainant alleges:

18 **PARTIES**

19 1. Carol Sigmann (Complainant) brings this Accusation solely in her official  
20 capacity as the Executive Officer of the California Board of Accountancy, Department of  
21 Consumer Affairs.

22 2. On or about September 27, 1991, the California Board of Accountancy  
23 issued Certified Public Accountant Certificate No. 59831 to Joe Refugio Diaz (Respondent).  
24 The Certified Public Accountant Certificate expired on June 30, 1999 because the renewal fee,  
25 required by Business and Professions Code section 5070.5, was not paid, and because the  
26 declaration of compliance with continuing education requirements was not submitted. The  
27 Certificate is currently expired.

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3. This Accusation is brought before the California Board of Accountancy

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1 information.

2 7. Section 5106 states:

3 "A plea or verdict of guilty or a conviction following a plea of nolo contendere is  
4 deemed to be a conviction within the meaning of this article. The record of the conviction shall  
5 be conclusive evidence thereof. The board may order the certificate or permit suspended or  
6 revoked, or may decline to issue a certificate or permit, when the time for appeal has elapsed, or  
7 the judgment of conviction has been affirmed on appeal or when an order granting probation is  
8 made, suspending the imposition of sentence, irrespective of a subsequent order under the  
9 provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his plea of  
10 guilty and to enter a plea of not guilty, or setting aside the verdict of guilty or dismissing the  
11 accusation, information or indictment."

12 8. Section 490 states:

13 "A board may suspend or revoke a license on the ground that the licensee has been  
14 convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties  
15 of the business or profession for which the license was issued. A conviction within the meaning  
16 of this section means a plea or verdict of guilty or a conviction following a plea of nolo  
17 contendere. Any action which a board is permitted to take following the establishment of a  
18 conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has  
19 been affirmed on appeal, or when an order granting probation is made suspending the imposition  
20 of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the  
21 Penal Code."

22 9. Section 5107, subdivision (a), states, in pertinent part:

23 "The executive officer of the board may request the administrative law judge, as  
24 part of the proposed decision in a disciplinary proceeding, to direct any holder of a permit or  
25 certificate found guilty of unprofessional conduct in violation of subdivisions (b), (c), (i) [now  
26 subdivision (j)], or (j) [now subdivision (k)] of Section 5100, or involving a felony conviction in  
27 violation of subdivision (a) of Section 5100, or involving fiscal dishonesty in violation of  
28 subdivision (h) of Section 5100 [now subdivision (i) of Section 5100], to pay to the board all



1 reasonable costs of investigation and prosecution of the case, including, but not limited to,  
2 attorneys' fees. The board shall not recover costs incurred at the administrative hearing."

3 FIRST CAUSE FOR DISCIPLINE

4 (Criminal Conviction)

5 10. Respondent is subject to disciplinary action under sections 490, 5100(a),  
6 and 5106 of the Code, for conviction of crimes substantially related to the qualifications,  
7 functions and duties of a certified public accountant, by reason of the following:

8 a. On or about November 8, 2002, Respondent was convicted on a plea of  
9 guilty to one count of violating Penal Code section 530.5(a) (identity theft, a felony), and one  
10 count of violating Penal Code section 311.11(a) (possession or control of child pornography, a  
11 misdemeanor), in the San Bernardino County Superior Court, Case No. FSB 035921, entitled  
12 *People v. Joe Refugio Diaz, Jr.*

13 b. The circumstances surrounding Respondent's conviction are as follows.  
14 On or about September 18, 2001, Respondent willfully and unlawfully obtained personal  
15 identifying information on person K.T. and used that information for an unlawful purpose and to  
16 obtain, or attempt to obtain, credit, goods, services and information in the name of K.T. without  
17 her consent. On or about February 4, 2002, Respondent willfully and unlawfully obtained  
18 personal identifying information on person R.D. and used that information for an unlawful  
19 purpose and to obtain, or attempt to obtain, credit, goods, services and information in the name of  
20 R.D. without her consent.

21 SECOND CAUSE FOR DISCIPLINE

22 (Failure to Report Conviction)

23 11. Respondent is subject to disciplinary action under sections 5100(g) and  
24 5063 of the Code in that Respondent failed to report to the Board in writing of the occurrence of  
25 his criminal conviction (as alleged in paragraph 10, above) within 30 days he had knowledge of  
26 the conviction.

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1 PRAYER

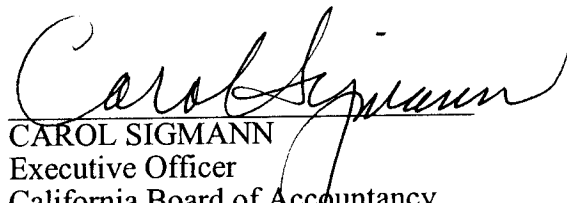
2 WHEREFORE, Complainant requests that a hearing be held on the matters herein  
3 alleged, and that following the hearing, the California Board of Accountancy issue a decision:

4 1. Revoking, suspending or otherwise imposing discipline upon Certified  
5 Public Accountant Certificate No. 59831 issued to Joe Refugio Diaz;

6 2. Awarding the California Board of Accountancy costs as provided by  
7 statute; and

8 3. Taking such other and further action as may be required.

9 DATED: April 23, 2003

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11   
12 CAROL SIGMANN  
13 Executive Officer  
14 California Board of Accountancy  
15 Department of Consumer Affairs  
16 State of California  
17 Complainant

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